

# **WIND ENERGY**

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## Article 1

### GENERAL PROVISIONS

#### Section 1-1 TITLE.

This Local Law may be cited as the “Wind Energy Facilities Law of the Town of Ashford, Cattaraugus County, New York.”

#### Section 1-2 PURPOSE.

The Town Board of the Town of Ashford adopts this Local Law to regulate the effective and efficient use of the Town’s wind energy resource through Wind Energy Conversion Systems (WECSs), and to regulate the harnessing of such systems so that public health, safety and welfare are not jeopardized.

#### Section 1-3 AUTHORITY.

The Town Board of the Town of Ashford enacts this Local Law under the authority granted to it by Article IX of the New York State Constitution, and the statutes of the State of New York and in particular by the New York Municipal Home Rule Law, New York Statute of Local Governments, § 10(1), (6), and (7), and New York Law § 130 (1)(Building Code), (3)(Electrical Code), (5)(Fire Prevention), (7) (Use of streets and highways), (7-a)(Location of driveways), (11)(Peace, good order and safety), (15)(Promotion of public welfare), (15-a)(Excavated lands), (16)(Unsafe buildings), (19)(Trespass), and (25)(Building lines),

#### Section 1-4 FINDINGS.

1-4.1 The Town Board of the Town of Ashford finds and declares that:

- A. Wind energy is a resource of the Town.
- B. The generation of electricity from properly sited wind turbines, including small systems, may be effective in reducing the cost of electricity, or emissions from the production of electricity, given that there may be available existing power distribution systems that can transmit electricity from wind generating stations to utilities, or the electricity may be used on or near the generating source.
- C. Regulations for the installation of wind turbines are necessary for protecting the health, safety, and welfare of owners of the site and for protecting neighboring owners and the general public.
- D. Wind Energy Facilities represent significant potential aesthetic impacts because of their large size, lighting, and shadow flicker effects, which may be reduced by restricted siting requirements.
- E. Wind Energy Facilities can create drainage problems through erosion and lack of sediment control for facility and access road sites, and harm farmlands through improper construction methods, all of which may be reduced by regulation.
- F. Wind Energy Facilities present a risk to bird and bat populations, which may be reduced through restricted siting requirements.
- G. Wind Energy Facilities may present risks to the property values of property owners of the sites and of adjoining property owners, which may be reduced through restricted siting requirements.
- H. Wind Energy Facilities may be significant sources of noise, which, if unregulated, can negatively affect adjoining properties.
- I. Without proper planning, construction of Wind Energy Facilities can create traffic problems and damage local roads.

- J. Interference with various types of communications by Wind Energy Facilities can be reduced by proper siting.

**Section 1-5 DEFINITIONS.**

As used in this Local Law, the following terms shall have the meanings indicated:

- 1-5.1 AGRICULTURAL OR FARM OPERATIONS – the land and on-farm buildings, equipment, manure processing and handling facilities, and practices which contribute to the production, preparation, and marketing of crops, livestock and livestock products as a commercial enterprise, including a “commercial horse boarding operation” as defined in subdivision thirteen of New York Agriculture and Markets Law §301 and “timber processing,” as defined in subdivision fourteen of New York Agriculture and Markets Law §301. Such farm operation may consist of one or more parcels of owned or rented land, which parcels may be contiguous or noncontiguous to each other.
- 1-5.2 AVIAN ANALYSIS - A study to assess the potential impact of proposed WECSs/Farms upon a bird and/or bat species.
- 1-5.3 COMMUNITY WIND ENERGY CONVERSION SYSTEM - A WECS consisting of a wind turbine, a tower, and associated control or conversion electronics, which has a rated capacity of not more than 100 kW and which is intended to primarily reduce consumption of utility power for more than one residence.
- 1-5.4 EAF – Environmental Assessment Form used in the implementation of the State Environmental Quality Review Act (SEQRA) as that term is defined in Part 617 of Title 6 of the New York Codes, Rules and Regulations.
- 1-5.5 ELECTROMAGNETIC INTERFERENCE (EMI) – The interference to communication systems created by scattering of electromagnetic signals.
- 1-5.6 INSURANCE –documentation indicating that damage or injury that might result from the failure of a tower or any other part or parts of the generation and transmission facility will be covered financially.
- 1-5.7 LARGE-SCALE WIND ENERGY CONVERSION SYSTEM (Large WECS) – Wind Energy Conversion Systems not designed for small-scale or community use.
- 1-5.8 NON-PARTICIPATING RESIDENCE – a residence that (1) is not part of parcel or lot in which a wind energy conversion system is located (2) has not agreed to wind farm setback or easement pursuant to Section 4-7 of this Local Law.
- 1-5.9 PARTICIPATING RESIDENCE – a residence that is included in the parcel or lot in which a wind energy conversion system is located, or which agreed to wind farm setback or easement pursuant to Section 4-7 of this Local Law. For purposes of this definition, “the parcel or lot in which a wind energy conversion system is located” also includes facilities/infrastructure such as buried collection lines, substations, access roads, construction staging areas and operations and maintenance facilities.
- 1-5.10 RESIDENCE – any dwelling, including seasonal residences, suitable for habitation (i.e., approved water, sewer and electric or a combination thereof) existing in the town of Ashford on the date an application is received. A residence may be part of a multi-dwelling or multipurpose building, but shall not include

buildings such as hunting camps, hotels, hospitals, motels, dormitories, sanitariums, nursing homes, schools or other buildings used for educational purposes, or correctional institutions.

- 1-5.11 TV/SATELLITE INTERFERENCE – any interference that disrupts television, satellite, radio or types of communication reception.
- 1-5.12 SEQRA – the New York State Environmental Quality Review Act and its implementing regulations in Title 6 of the New York Codes, Rules and Regulations Part 617.
- 1-5.13 SHADOW FLICKER – The alternating pattern of sun and shade caused by wind tower blades casting a shadow.
- 1-5.14 A WEIGHTED SOUND PRESSURE LEVEL (LA) – The sound pressure level measured in decibels (dBA) and equal to 20 times the logarithm to the base 10 of the ratio of root mean square sound pressure to a reference sound pressure, weighted by frequency band following standard procedures. The reference sound pressure in air is  $2 \times 10^{-5}$  Pascals.
- 1-5.15 EQUIVALENT SOUND PRESSURE LEVEL – The average A-weighted sound pressure level that gives the same total energy as the varying sound level during a given period of time. Also referred to as  $LA_{eq}$  for purposes of this Local Law, the minimum period to be utilized in calculating or measuring  $LA_{eq}$  is one hour.
- 1-5.16 SITE – the parcel(s) of land where a Wind Energy Facility is to be placed. The site can be publicly or privately owned by an individual or group of individuals, or by such an entity such as a corporation or LLC, controlling single or adjacent properties, or a combination thereof. Where multiple lots are in joint ownership, the combined lots shall be considered as one for purposes of applying setback requirements. Any property that has a Wind Energy Facility or has entered an agreement or lease for said facility or a setback agreement shall not be considered off-site.
- 1-5.17 SMALL-SCALE WIND ENERGY CONVERSION SYSTEM (Small WECS) – a WECS consisting of a wind turbine, a tower, and associated control or conversion electronics, which has a rated capacity of not more than 100 kW and which is intended to primarily reduce consumption of utility power at that location.
- 1-5.18 TOTAL HEIGHT – The vertical distance from ground level to the tip of a wind turbine blade when the tip is at its highest point.
- 1-5.19 WIND ENERGY CONVERSION SYSTEM (WECS) – a machine that converts the kinetic energy from the wind into a usable form (commonly known as a “wind turbine” or “windmill”).
- 1-5.20 WIND ENERGY FACILITY – a WECS or Wind Measurement Tower, including all related infrastructure, electrical lines and substations, access roads and accessory structures.
- 1-5.21 WIND ENERGY CONVERSION FARM (WIND FARM) – More than one large-scale WECS located in proximity to each other is commonly referred to as a Wind Farm.
- 1-5.22 WIND MEASUREMENT TOWER – a tower used for the measurement of meteorological data such as temperature, wind speed, and wind direction.
- 1-5.23 WIND TOWER – A monopole, freestanding, or guyed structure that supports a wind turbine generator.

1-5.24 WIND ENERGY PERMIT – A Permit granted pursuant to this Local Law allowing the holder the right to construct, maintain, and operate a Wind Energy Facility.

**Section 1-6 APPLICABILITY.**

- 1-6.1 The requirements of this Local Law shall apply to all Wind Energy Facilities proposed, operated, modified, or constructed after the effective date of this Local Law.
- 1-6.2 Wind Energy Facilities for which a required permit has been properly issued and upon which construction has commenced prior to the effective date of this Local Law, shall not be required to meet the requirements of this Local Law; provided, however, that:
- A. Any such preexisting Wind Energy Facility, which does not provide energy for a continuous period of 12 months, shall meet the requirements of this Local Law prior to recommencing production of energy.
  - B. No modification or alteration to an existing Wind Energy Facility shall be allowed without full compliance with this Local Law.
  - C. Any Wind Measurement Tower existing on the effective date of this Local Law shall be removed no later than 24 months after said effective date, unless a Wind Energy Permit for said Wind Energy Facility is renewed or obtained through written application and payment of the appropriate fee.

**Section 1-7 PERMITS REQUIRED; TRANSFER; MODIFICATIONS; EXEMPTIONS**

- 1-7.1 No Wind Energy Facility shall be constructed, reconstructed, modified, or operated in the Town of Ashford except in compliance with this Local Law.
- 1-7.2 No WECS shall be constructed, reconstructed, modified, or operated in the Town of Ashford except with a Wind Energy Facility Permit approved pursuant to this Local Law.
- 1-7.3 No Wind Measurement Tower shall be constructed, reconstructed, modified, or operated in the Town of Ashford except pursuant to a Wind Energy Facility Permit issued pursuant to this Local Law.
- 1-7.4 No Small-Scale or Community WECSs shall be constructed, reconstructed, modified, or operated in the Town of Ashford except pursuant to a Wind Energy Permit issued pursuant to this Local Law.
- 1-7.5 This Local Law shall apply to all areas of the Town of Ashford.
- 1-7.6 Transfer. No transfer of any Wind Energy Facility or Wind Energy Permit, nor sale of the entity owning such facility including the sale of more than 30% of the stock of such entity (not counting sales of shares on a public exchange), may be made without prior approval of the Town Board. Approval shall be granted upon written acceptance of the transferee of the obligations of the transferor under this Section, and the transferee's demonstration, is the sole discretion of the Town Board, that it can meet the technical and financial obligations of the transferor. No transfer shall eliminate the liability of the transferor or of any other party under this Section unless the entire interest of the transferor in all facilities in the town is transferred and there are no outstanding obligations or violations.
- 1-7.7 Exemptions. No permit or other approval shall be required under this Local Law for WECS utilized solely for agricultural operations in a state or county agricultural district, as long as the facility is set back at least one and a half times its Total Height from a property line, and does not exceed 120 feet in height. Towers over 120 feet in Total Height utilized solely for agricultural operations in a state or county agricultural district shall apply for a permit in accordance with this Local Law, but shall not require a height variance. Prior to the construction of a WECS under this exemption, the property owner or a designated agent shall

submit a sketch plan or building permit application to the Town to demonstrate compliance with the setback requirements.

**Sections 1- 8 and 1-9. RESERVED FOR FUTURE USE**

**Article 2**

**Wind Measurement Towers**

**Section 2-1 WIND SITE ASSESSMENT.**

The Town Board acknowledges that prior to construction of a WECS, a wind site assessment may be conducted to determine the wind speeds and the feasibility of using particular sites. Installation of Wind Measurement Towers, also known as anemometer (“Met”) towers, shall be permitted on the issuance of a Wind Energy Permit in accordance with this Article.

**Section 2-2 APPLICATIONS FOR WIND MEASUREMENT TOWERS.**

2-2.1 An application for Wind Measurement Tower shall include:

- A. Name, address, and telephone number of the applicant. If the applicant is represented by an agent, the application shall include the name, address, and telephone number of the agent as well as an original signature of the applicant authorizing the representation.
- B. Name, address, and telephone number of the property owner. If the property owner is not the applicant, the application shall include a letter or other written permission (i.e., written agreement) signed by the property owner (i) confirming that the property owner is familiar with the proposed applications and (ii) authorizing the submission of the application.
- C. Address of each proposed tower location, including Tax Map Section, Block, and Lot Number.
- D. Proposed Development Plan and Map.
- E. Decommissioning Plan, including a security bond for removal.
- F. Emergency information identified in Section 4-4.

**Section 2-3 STANDARDS FOR WIND MEASUREMENT TOWERS.**

2-3.1 The distance between a Wind Measurement Tower and the property line shall be at least one and a half times the total height of the tower. Sites can include more than one piece of property and the requirement shall apply to the combined properties. Exceptions for neighboring property are also allowed with the consent of those adjoining property owners (i.e., written agreement).

- A. Wind Energy Permits for Wind Measurement Towers may be issued for a period of up to two years. Permits shall be renewable upon application to the Town Board in accordance with the procedure of this Article.
- B. Where Wind Measurement Towers become a part of a constructed Wind Farm, no separate permit from the Wind Farm Wind Energy Permit is required, and applications for additional or modified Wind Measurement Towers to serve the Wind Farm shall be processed under Article 4 of this Local Law. Permits for Wind Measurement Towers shall terminate upon the construction of a Wind Farm utilizing the Wind Measurement Tower, Bond and other requirements shall be considered as part of the Wind Farm Application process under Article 4 of this Local Law.

**Article 3**

**Small-scale Wind Energy Conversion Systems**

**Section 3-1 PURPOSE AND INTENT.**

The purpose of this Article is to provide standards for Small-scale WECSs designed for home, farm, and small commercial use to service the parcel where it is located, and that are primarily used to reduce the consumption of utility power from non-sustainable energy at that location. The intent of this Article is to encourage the development of Small-scale WECSs and to protect public health, safety, and community welfare.

**Section 3-2 APPLICATIONS.**

3-2.1 Prior to construction of any Small-scale WECS, the project proponent shall first obtain a Wind Energy Permit and Site Plan Approval from the Town Board of Ashford, and a Wind Energy Permit from the town of Ashford Code Enforcement Officer.

3-2.2 Wind Energy Permit Applications for Small-scale WECSs shall include:

- A. Name, address, and telephone number of the applicant. If the applicant is represented by an agent, the application shall include the name, address, and telephone number of the agent as well as an original signature of the applicant authorizing the representation.
- B. Name, address, and telephone number of the property owner. If the property owner is not the applicant, the application shall include a letter or other written permission (i.e., written agreement) signed by the property owner (i) confirming that the property owner is familiar with the proposed applications and (ii) authorizing the submission of the application.
- C. A Site Assessment performed by a Certified Wind Assessor.
- D. A site plan drawn in sufficient detail to show the following:
  - i. Location of the tower(s) on the site and the tower height, including blades, rotor diameter and ground clearance.
  - ii. Address of each proposed tower location, including Tax Map Section, Block and Lot Number; and dimensions of all existing structures and uses on site within 300 feet of the WECS.
  - iii. Dimensional representation of the various structural components of the tower construction including base and footing.
  - iv. Evidence that the proposed tower height does not exceed the height recommended by the manufacturer or distributor of the system.
  - v. *Certification by the tower manufacturer that this tower's design is sufficient to withstand wind loading requirements for structures as established by the New York State Building Code.*
  - vi. A line drawing of the electrical components of the system in sufficient detail to allow for determination that the manner of installation conforms to the Uniform Fire Prevention and Building Code.
  - vii. Turbine information: Specific information on the type, size, height, rotor material, rated power output, performance, safety and noise characteristics of the residential wind turbine and tower. A photo of the turbine in a similar application, along with a visual analysis of the turbine at the proposed location shall be included in the site plan. This visual analysis shall also indicate the color treatment of the system's components and any visual screening incorporated into the project that is intended to lessen the system's visual prominence.
  - viii. Sufficient information demonstrating that the system will be used primarily to reduce consumption of electricity at that location.



- ix. Written evidence that the electric utility service provider that serves the proposed Site has been informed of the applicant's intent to install an interconnected customer-owned electricity generator, unless the applicant does not plan, and so states so in the application, to connect the system to the electricity grid.
  - x. A completed Environmental Assessment Form. If the proposed location falls within a sensitive area, an Erosion and Sedimentation Control Plan is required.
  - xi. *Turbines must be placed at least 100 feet from state-regulated wetlands and tower height plus 10 percent from above-ground utilities.*
  - xii. If necessary, additional information requests must be submitted in writing for the proposed project, with a date specified in the information request for the information to be received.
  - xiii. The Town Board may determine that not all of these items are necessary for a particular project.
- E. The Town of Ashford Code Enforcement Officer shall evaluate all applications. The applicant shall be required to obtain a Wind Energy Permit prior to installation. In order to be approved by the Code Enforcement Officer, all Small-scale WECSs must conform to all of the following standards:
- i. Only one Small-scale WECS per tax map parcel shall be permitted.
  - ii. The turbine, measured to the apex of the blade, is not taller than 150 feet.
  - iii. The maximum turbine output, as shown by the manufacturer's rated capacity, shall not exceed 100 kW.
  - iv. The Small-scale WECS shall be set back a minimum of 2.5 times the total height of the WECS from:
    - a. Any participating residence in existence at the time the application is made.
    - b. Property lines of the site on which the structure is located.
  - v. The Small-scale WECS shall be set back a minimum of 4.5 times the total height of the WECS from:
    - a. Any nonparticipating residence in existence at the time the application is filed.
    - b. The right of way of public roads.
  - vi. The WECS shall be painted in accordance with standard manufacturer coating specifications.
  - vii. Lighting: Exterior lighting on any structure associated with the system shall not be allowed, except lighting that is specifically required by the Federal Aviation Administration (FAA).
  - viii. Signage: In accordance with manufacturer's specifications, no advertising sign or logo shall be placed or painted on any turbine or tower. The Town Board may allow the placement of the manufacturer's logo, with prior approval, on the ground level structure in an unobtrusive manner.
  - ix. Safety and security requirements: All Small-scale WECS shall adhere to the following safety and security requirements:
    - a. Safety shutdown: Each wind turbine shall be equipped with both manual and automatic controls to limit the rotational speed of the blade within the design limits of the rotor. The conformance of rotor and over-speed control design and fabrication with good engineering practices shall be certified by the manufacturer.
    - b. Grounding: All structures that may be charged with lightning shall be grounded according to applicable electrical code.

- c. Wiring: All wiring associated with the Wind Energy Facility shall be installed underground within the fall zone. This standard may be modified by the Town Board if the terrain is determined to be unsuitable due to reasons of excessive grading, biological impacts, or similar factors.
- d. Ground clearance: The blade tip of any wind turbine shall, at its lower point, have ground clearance of not less than 30 feet.
- e. Climability: Wind turbine towers shall not be climbable up to 15 feet above ground level and/or other appropriate method of access control shall be provided.
- f. Anchor points for guy wires: Anchor points for any guy wires for a system tower shall be located on the property that the system is located on and not on or across any above ground electric transmission or distribution lines. The point of attachment for the guy wires shall be enclosed by a fence six feet high or sheathed in bright orange or yellow covering from three to eight feet above the ground. The minimum set back for the guy wire anchors shall be 10 feet from the property boundary.
- g. A completed Environmental Assessment Form. If the proposed location falls within a sensitive area, an Erosion and Sedimentation Control Plan is required.

### 3-2.3 Permit Issued by the Town Board

Pursuant to the procedures and standards contained in this sub-section, the Town Board may issue a Wind Energy Permit to allow a Small-scale WECS where the maximum turbine output, as shown by the manufacturer's rated capacity, does not exceed 100 kW.

- A. Compliance with regulatory agencies: The applicant is required to obtain all necessary regulatory approvals and permits from all federal, state, county, and local agencies having jurisdiction related to the construction of the Small-scale WECS. If approvals have not been received at the time that the Town Board considers the application for the Wind Energy Permit, receipt of these other agency approvals shall be a condition to be completed prior to the issuance of a Special Use Permit.
- B. Noise Standard  
Audible noise standard: Wind turbine operations shall not cause the noise level at the proposed project site to exceed background (i.e., ambient noise level) noise levels at the nearest participating residence by greater than five dB (A).
- C. Town Board Action on Application  
The Town Board may grant the Wind Energy Permit, deny the Permit, or grant the Permit with written stated conditions. Denial of the Permit shall be by written decision based upon substantial evidence submitted to the Board.

Prior to issuing a Wind Energy Permit for a Small-scale WECS, the Town Board of Ashford shall make all of the following findings:

- i. The proposed WECS project is consistent with the Town of Ashford Local Laws.
  - ii. The proposed WECS project will not unreasonably interfere with the orderly land use and development plans for the Town of Ashford.
  - iii. That the proposed WECS project will not be detrimental to public health, safety or welfare of the community.
- D. Amendment to approved Wind Energy Permit

Any changes or alterations to the WECS, after approval of the Wind Energy Permit, shall require amendment to the Permit by the Town Board. Such amendment shall be subject to all the procedural requirements and standards of this section.

E. Permit Revocation

Failure to abide by and faithfully comply with the standards of this section and with any or all conditions that may be attached to the granting of the Wind Energy Permit shall constitute ground for the revocation of the permit, after a public hearing.

3-2.4 Abandonment of Use

- A. All Small-scale WECSs shall be maintained in good condition and in accordance with all requirements of this ordinance.
- B. Any Small-scale WECS, which is non-operational for a period of twelve (12) consecutive months, shall be deemed an abandoned structure and shall be re-permitted or dismantled in accordance with the Town of Ashford Local Law governing abandoned property/structures.
- C. If ownership of the property has transferred or the Small-scale WECS is no longer maintained in good condition, the Town Board will enforce the local law pertaining to abandoned property/structures.
- D. Failure to abide by and faithfully comply with the standards of this section and with any and all conditions that may be attached to the granting of the Wind Energy Permit shall constitute grounds for the revocation of the permit, after a public hearing.

3-2.5 Assessment

- A. A Small-scale WECS shall be subject to assessment by the Town of Ashford. The Town Board may enter into a Payment in Lieu of Taxes (PILOT) pursuant to Real Property Tax Law § 487.

**Section 3-3 COMMUNITY WECS – SMALL WIND PRODUCERS.**

All Small-scale Community WECSs shall comply with the following standards. Additionally, such systems shall also comply with all the requirements established by other sections of this Article that are not in conflict with the requirements contained in this section.

- 3-3.1 The Community WECS tower shall be set back a minimum of 2.5 times the total height of the WECS from:
  - A. Any participating residence in existence at the time the application is made.
  - B. Property lines of the site on which the structure is located.
- 3-3.2 The Community WECS shall be set back a minimum of 4.5 times the total height of the WECS from:
  - A. Any nonparticipating residence in existence at the time the application is filed.
  - B. The right of way of public roads.
- 3-3.3 Only one Community WECS tower per tax map parcel shall be allowed. WECS shall be used primarily to reduce the on-site consumption of electricity from non-sustainable energy at that location.
- 3-3.4 The turbine, measured to the apex of the blade, is not taller than 150 feet.
- 3-3.5 The maximum turbine power output is limited to 100 kW.
- 3-3.6 The WECS shall be painted in accordance with standard manufacturer coating specifications.
- 3-3.7 Exterior lighting on any structure associated with the system shall not be allowed except that which is specifically required by the Federal Aviation Administration (FAA).
- 3-3.8 All on-site electrical wires associated with the system shall be installed underground except for “tie-ins” to a public utility company and public utility company transmission poles, towers and lines. This standard may be modified by the decision-maker if the project terrain is determined to be unsuitable due to reasons of excessive grading, biological impacts, or similar factors.

- 3-3.9 The system shall be operated such that no disruptive electromagnetic interference is caused. If it has been demonstrated that a system is causing harmful interference, the system operator shall promptly mitigate the harmful interference or cease operation of the system.
- 3-3.10 Signs shall be posted, visible from all directions, on the tower at a height of five feet warning of electrical shock or high voltage and harm from revolving machinery, and giving a local contact number in case of emergency. No brand names, logo or advertising shall be placed or painted on the tower, rotor, generator, or tail vane where it would be visible from the ground, except that a system or tower's manufacturer's logo with prior approval, may be displayed on system generator housing in an unobtrusive manner.
- 3-3.11 Towers shall be constructed to provide one of the following means of access control, or other appropriate method of access:
  - A. Tower-climbing apparatus located no closer than 15 feet from the ground.
  - B. A locked anti-climb device installed on the tower.
  - C. A locked, protective fence at least six feet in height that encloses the tower.
- 3-3.12 Anchor points for any guy wires for a system tower shall be located within the property that the system is located on and not on or across any above-ground electric transmission or distribution lines. The point of attachment for the guy wires shall be enclosed by a fence six feet high or sheathed in bright orange or yellow covering from three to eight feet above the ground.
- 3-3.13 Construction of on-site access roadways shall be minimized. Temporary access roads utilized for initial installation shall be re-graded and re-vegetated to the pre-existing natural condition after completion of installation.
- 3-3.14 To prevent harmful wind turbulence from existing structures, the minimum height of the lowest part of any wind turbine blade shall be at least 30 feet above the highest structure or tree within a 250-foot radius. Modification of this standard may be made when the applicant demonstrates that a tower height will not jeopardize the safety of the wind turbine structure. In addition, the blade tip of any wind turbine shall, at its lower point, have ground clearance of not less than 30 feet.
- 3-3.15 All Community WECSs tower structures shall be designed and constructed to be in compliance with pertinent provisions of the Uniform Fire Prevention and Building Code.
- 3-3.16 All Community WECSs shall be equipped with manual and automatic over-speed controls. The conformance of rotor and over-speed control design and fabrication with good engineering practices shall be certified by the manufacturer.
- 3-3.17 A Decommissioning Bond shall be provided in the amount of \$25,000 per Community WEC. Such amount shall be adjusted every five years based on the report of an independent engineer reporting to the Town Board, and paid for by the permit holder.

**Section 3-4 STANDARDS.**

The Community WECS shall comply with the following standards:

- 3-4.1 Setback requirements. The WECS shall not be located closer to a property line than two and a half times the Total Height of the facility.
- 3-4.2 Noise. Except during short-term events including utility outages and severe wind storms, the WECS shall be designed, installed, and operated so that noise generated by the system shall not cause the noise level to exceed background (i.e., ambient noise level) noise levels at the nearest participating residence by greater than 3 dB(A).

**Section 3-5 ABANDONMENT OF USE.**

- 3-5.1 All Community WECSs shall be maintained in good condition and in accordance with all requirements of this section.
- A. WECSs shall be maintained in good condition and in accordance with all requirements of this ordinance.
  - B. Any Community WECS, which is non-operational for a period of twelve (12) consecutive months, shall be deemed an abandoned structure and shall be re-permitted or dismantled in accordance with the Town of Ashford Local Law governing abandoned property/structures.
  - C. If ownership of the property has transferred or the Community WECS is no longer maintained in good condition, the Town Board will enforce the local law pertaining to abandoned property/structures.
  - D. Failure to abide by and faithfully comply with the standards of this section and with any and all conditions that may be attached to the granting of the Wind Energy Permit shall constitute grounds for the revocation of the permit, after a public hearing.

**Article 4**

**Large –Scale Wind Energy Conversion System**

**Section 4-1 APPLICATIONS FOR WIND ENERGY PERMITS FOR LARGE-SCALE WIND ENERGY CONVERSION SYSTEMS.**

- 4-1.1 An application for a Wind Energy Permit for a large-scale WECS shall include the following, presented in the following order:
- A. Name, address, and telephone number of the applicant. If the applicant is represented by an agent, the application shall include the name, address, and telephone number of the agent as well as an original signature of the applicant authorizing the representation.
  - B. Name, address, and telephone number of the property owner. If the property owner is not the applicant, the application shall include a letter or other written permission (i.e., written agreement) signed by the property owner (i) confirming that the property owner is familiar with the proposed application and (ii) authorizing the submission of the application.
  - C. A site plan drawn in sufficient detail to show the following:
    - i. A description of the project, including the number and maximum rate capacity of each WECS, the location of the tower(s) on the site and the tower height, including blades, rotor diameter and ground clearance.
    - ii. Address of each proposed tower location, including Tax Map Section, Block and Lot Number; and dimensions of all existing structures and uses on site within a perimeter of 500 and 1,000 feet of the WECS.
    - iii. Dimensional representation of the various structural components of the tower construction including base and footing.
    - iv. Evidence that the proposed tower height does not exceed the height recommended by the manufacturer or distributor of the system provided by a licensed New York State Professional Engineer.
    - v. Certification by the tower manufacturer or a licensed New York State Professional Engineer that this tower’s design is sufficient to withstand wind-loading requirements for structures as established by the New York State Building Code.

- vi. A line drawing of the electrical components of the system in sufficient detail to allow for determination that the manner of installation conforms to the Uniform Fire Prevention and Building Code.
  - vii. Turbine information: Specific information on the type, size, height, rotor material, rated power output, performance, safety and noise characteristics of the wind turbine and tower.
  - viii. Certification by the developer that the WECS will comply with New York State Agriculture and Markets Restoration Plan (*"Guidelines for Agricultural Mitigation for Windpower Projects"*).
  - ix. A visual analysis of the WECS as installed, which may include a computerized photographic simulation, demonstrating the visual impacts from nearby strategic vantage points. The visual analysis shall also indicate the color treatment of the system's components and any visual screening incorporated into the project that is intended to lessen the system's visual prominence.
  - x. A copy of a Visual Impact Plan performed in accordance with guidance from the New York State Department of Environmental Conservation.
  - xi. Grading plan and erosion and sedimentation control plan approved by a New York State Licensed Professional Engineer.
  - xii. Turbines shall be placed at least 100 feet from state-regulated wetlands and tower height plus 10 percent from aboveground utilities. If turbine is placed within 100 feet of state-regulated wetlands, permits are required from the United States Army Corps of Engineers and/or the New York State Department of Environmental Conservation.
  - xiii. Preconstruction Environmental Monitoring, which includes but is not limited to soil quality testing, groundwater analysis and avian and bat populations assessments are to be performed at the expense of the WECS developer and which will be used to establish the background or baseline for the proposed WECS location. The results of this monitoring will be provided to the Town Board in a written report or as part of the environmental impact statement.
  - xiv. Such additional information as may be reasonably requested by the Town Board for a complete understanding of the proposed project.
- D. A plot plan prepared by a licensed surveyor or engineer drawn in sufficient detail to clearly describe the following:
- i. Property lines and physical dimensions of the Site.
  - ii. Location, approximate dimensions and types of major existing structures and uses on the site, public roads, and adjoining properties within 500 feet of the boundaries of the proposed WECS Site.
  - iii. Location and elevation (Above Mean Sea Level) of each proposed WECS.
  - iv. Location of all above ground utility lines on the Site or within one radius of the Total Height of the WECS, transformers, power lines, interconnection point with transmission lines, and other ancillary facilities or structures.
  - v. Location and size of structures above 35 feet within a five-hundred-foot radius of the proposed WECS. For purposes of this requirement, electrical transmission and distribution lines,

antennas and slender or open lattice towers are not considered structures.

- vi. To demonstrate compliance with the setback requirements of this Local Law, circles drawn around each proposed tower location Equal to:
  - a. 1,000 foot perimeter.
  - b. 1,500 foot perimeter.
- vii. Location of the nearest residential structure located off the site, and the distance from each proposed WECS.
- viii. All proposed facilities, including access roads, electrical lines, substations, storage or maintenance units, and fencing.
- E. Vertical drawing of the WECS showing Total Height, turbine dimensions, tower and turbine colors, ladders, distance between ground and lowest point of any blade, location of climbing pegs, and access doors. One drawing may be submitted for each WECS of the same type and Total Height.
- F. Landscaping Plan depicting existing vegetation and describing any areas to be cleared and the specimens proposed to be added, identified by species and size of specimen at installation and their locations.
- G. Lighting Plan showing Federal Aviation Administration (FAA) required lighting and other proposed lighting. The application should include a copy of the determination by the FAA to establish required markings and/or lights for the structure, but if such determination is not available at the time of the application, a Wind Energy Permit for any lighted facility may not be issued until such determination is submitted.
- H. List of property owners, with their mailing addresses, within 2,500 feet of the boundaries for the proposed Site.
- I. Decommissioning Plan: The applicant shall submit a decommissioning plan, which shall include: (1) the anticipated life of the WECS; (2) the estimated decommissioning costs in current dollars; (3) how said estimate was determined; (4) the method of ensuring that funds will be available for decommissioning and restoration; (5) the method, such as by annual re-estimate by a licensed engineer, that the decommissioning cost will be kept current; and (6) the manner in which the WECS will be decommissioned and the site restored. This shall include removal of all structures and debris to a depth of three feet, restoration of the soil, and restoration of vegetation (consistent and compatible with surrounding vegetation), less any fencing or residual minor improvements requested by the landowner.
- J. Complaint Resolution: The application will include a complaint resolution process to address complaints from nearby residents. The process may use an independent mediator or arbitrator and may include a time limit for complaint resolution. The applicant shall make every reasonable effort to resolve any complaint.
- K. An application shall include information relating to the construction/installation of the WECS facility as follows:
  - i. A construction schedule describing expected commencement and completion dates; and
  - ii. A description of the anticipated routes to be used by construction and delivery vehicles and the gross weights and heights of those loaded vehicles.
- L. Applications for Wind Energy Permits for Wind Measurement Towers subject to this Local Law may be jointly submitted with the WECS Application.

- M. For each proposed WECS, include make, model, picture, and manufacturers' specifications, including noise decibels data. Include Manufacturers' Material Safety Data Sheet documentation for the type and quantity of all materials used in the operation of all equipment including, but not limited to, all lubricants and coolants.
- N. The following information shall be included in the Environmental Impact Statement prepared for a WECS. Otherwise, the following studies shall be submitted as part of the application:
- i. Shadow Flicker: The applicant shall conduct a study on potential shadow flicker. The study shall identify locations where shadow flicker may be caused by the WECS and the expected durations of the flicker at these locations. The study shall identify areas where shadow flicker may interfere with residences and describe measures taken to eliminate the problems, including, but not limited to planting of trees to mitigate the flicker or installation of shades on windows of the affected residence.
  - ii. Shadow Flicker Map: Maps shall be prepared showing projected annual hours of shadow flicker impact for all sensitive areas/locations within the project area including, but not limited to, any residence, school, hospital, church or public library.
  - iii. Shadow Flicker Duration: Shadow flicker for all sensitive areas/locations within the project area shall not exceed thirty (30) minutes per day and thirty (30) hours per year. Any sensitive area/locations within the project area, which exceed the above standard, will have this impact eliminated.
  - iv. An analysis shall be completed showing the effect of shadow flicker upon all fish hatcheries and trout streams within ½-mile proximity of the project area. This analysis can be submitted as part of the application or can be included in the Draft Environmental Impact Statement (DEIS).
  - v. Avian Analysis: The applicant shall submit an avian study to assess the potential impact of proposed WECS upon bird and bat species. The avian study shall at a minimum report on a literature survey for threatened and endangered species, and any information on critical flyways.
  - vi. Visual Impact: Applications shall include a visual impact study of the proposed WECS as installed, which may include a computerized photographic simulation, demonstrating any visual impacts from strategic vantage points. Color photographs of the proposed Site from at least two locations accurately depicting the existing conditions shall be included. The visual analysis shall also indicate the color treatment of the system's components and any visual screening incorporated into the project that is intended to lessen the system's visual prominence.
  - vii. A Fire Protection and Emergency Response Plan, created in consultation with the fire department(s) having jurisdiction over the proposed Site.
  - viii. Noise Analysis: a noise analysis by an independent certified acoustical consultant documenting the noise levels associated with the proposed WECS. The study shall document noise levels at property lines and at the nearest non-participating residence (if access to the nearest residence is not available, the Town Board may modify this requirement). The noise analysis shall include low frequency noise (i.e., below human hearing/sub-sonic) and shall be conducted during day and night conditions, with a minimum of four quarterly measurements obtained.
  - ix. Property value analysis prepared by a Licensed Appraiser in accordance with industry standards, regarding the potential impact on values of properties neighboring WECS Sites.



- x. An assessment of potential electromagnetic interference with microwave, radio, television, personal communication systems, and other wireless communication. If during the assessment potential interference is identified, the WECS shall be resited, filtered and/or shielded to mitigate this interference.
  - xi. A Wetlands Delineation Report.
  - xii. A blasting study, including proposed methods of protecting water wells within 500 feet of a WEC.
  - xiii. A road impact study, including methodology for determining pre-construction conditions and remediating any damage.
- O. Completed Part I Environmental Assessment Form (EAF) and a Draft Environmental Impact Statement.
  - P. The applicant shall, prior to the receipt of a Building Permit, demonstrate that the proposed facility meets the system reliability requirements of the New York Independent System Operator, or provide proof that it has executed an Interconnection Agreement with the New York Independent System Operator and/or applicable Transmission Owner.
  - Q. A statement, signed under penalties of perjury that the information contained in the application is true and accurate.

**Section 4-2 APPLICATION REVIEW PROCESS.**

- 4-2.1 Applicants may request a pre-application meeting with the Town Board or with any consultants retained by the Town Board for application review. Meetings with the Town Board shall be conducted in accordance with the Open Meetings Law.
- 4-2.2 Thirteen copies of the application shall be submitted to the Ashford Town Clerk. Payment of all application fees shall be made at the time of application submission. If a variance is requested, variance application fees shall be paid at the time of the receipt of the application.
- 4-2.3 Town staff or designated consultants shall, within 30 days of receipt, or such longer time if agreed to by the applicant, determine if all information required under this Article are included in the application. Unless the Town Board waives any application requirement, no application shall be considered until deemed complete.
- 4-2.4 If the application is deemed incomplete, the Town Board or its designated reviewer shall provide the applicant with a written statement listing the missing information. No refund of application fees shall be made, but no additional fees shall be required upon submittal of the additional information unless the number of WECSs proposed is increased.
- 4-2.5 Upon submission of a complete application, including the grant of any application waiver by the Town Board, the Ashford Town Clerk shall transmit the application to the Town Board.
- 4-2.6 The Town Board shall hold at least one public hearing on the application. Notice shall be given by first class mail to property owners within 2,500 feet of the boundaries of the proposed WECSs, and published in the Town's official newspaper, no less than ten nor more than twenty days before any hearing, but, where any hearing is adjourned by the Town Board to hear additional comments, no further publication or mailing shall be required. The applicant shall prepare and mail the Notice of Public Hearing prepared

by the Town Board, and shall submit an affidavit of service. The assessment roll of the town shall be used to determine mailing addresses.

4-2.7 The public hearing may be combined with public hearings on any Environmental Impact Statement or requested waivers.

4-2.8 SEQRA Review. Applications for WECSs are deemed Type I projects under SEQRA. The Town Board may conduct its SEQRA review in conjunction with other agencies, in which case the records of review by said communities shall be part of the record of the Town Board's proceedings.

4-2.9 The Town Board may require an escrow agreement for an independent engineering and legal review of the applications and any environmental impact statements before commencing its review. At the completion of the SEQRA review process, if a Positive Declaration of Environmental Significance has been issued and an Environmental Impact Statement prepared, the Town Board shall issue a Statement of Findings, which Statement may also serve as the Town Board's decision on the applications.

### **Section 4-3 STANDARDS FOR WECSs.**

4-3.1 The following standards shall apply to all WECSs, unless specifically waived by the Town Board as part of a Wind Energy Permit.

- A. All power transmission lines from the tower to any building or other structure shall be located underground to the maximum extent practicable.
- B. No television, radio, or other communication antennas may be affixed or otherwise made part of any WECS, except pursuant to the Town Code. Applications may be jointly submitted for WECSs and telecommunications facilities.
- C. No advertising signs are allowed on any part of the Wind Energy Facility, including fencing and support structures.
- D. Lighting of tower. No tower shall be lit except to comply with FAA requirements. Minimum security lighting for ground level facilities shall be allowed as approved on the Wind Energy Facility Development Plan.
- E. All applicants shall use measures to reduce the visual impact of WECSs to the extent possible. WECSs shall use tubular towers. All structures in a project shall be finished in a single, non-reflective matte finished color or a camouflage scheme. WECSs within a multiple WECSs project (i.e., wind farm) shall be constructed using wind turbines whose appearance, with respect to one another, is similar within and throughout the Project, to provide reasonable uniformity in overall size, geometry, and rotational speeds. No lettering, company insignia, advertising, or graphics shall be on any part of the tower, hub, or blades.
- F. Guy wires shall not be used and guyed towers are prohibited.
- G. No WECSs shall be installed in any location where its proximity with existing fixed broadcast, retransmission, or reception antenna for radio, television, or wireless phone or other personal communication systems would produce electromagnetic interference with signal transmission or reception. No WECSs shall be installed in any location along the major axis of an existing microwave communications link where its operation is likely to produce electromagnetic interference in the link's operation. If it is determined that a WECS is causing electromagnetic interference, the operator shall take the necessary corrective action to eliminate this interference including relocation or removal of the facilities, or resolution of the issue with the impacted parties. Failure to remedy electromagnetic interference is grounds for revocation of the Wind Energy Permit for the specific WECS or WECSs causing the interference.

- H. All solid waste and hazardous waste and construction debris shall be removed from the Site and managed in a manner consistent with all appropriate rules and regulations.
- I. WECSs shall be designed to minimize the impacts of land clearing and the loss of open space areas. Land protected by conservation easements shall be avoided. Wherever possible, the Town Board will give priority to previously developed areas for WECSs siting.
- J. WECSs shall be located in a manner, which minimizes significant negative impacts on animal (including bird and bat) species, and particularly rare animal species.
- K. Storm-water run-off and erosion control shall be managed in a manner consistent with all applicable State and Federal laws and regulations.
- L. The maximum Total Height of any WECS (including the blade height) shall be 400 feet. (Notwithstanding any other procedure for obtaining a waiver under this Local Law, the Town Board may increase, the allowable height by up to 50 feet if the Applicant demonstrates, in the sole discretion of the Town Board, said increase will result in fewer turbines and less environmental impacts.)
- M. Construction of the WECSs shall be limited to the hours of 7 a.m. to 7 p.m. except for certain activities that require cooler temperatures than possible during the day, subject to approval from the Town Board.
- N. The standards for restoration and preservation of farm land of the New York State Department of Agriculture and Markets' "Guidelines for Agricultural Mitigation for Windpower Projects" shall be followed.
- O. The WECS developer will conduct annual Environmental Monitoring to assess the environmental impacts associated with the WECS and compare this data to the baseline data. This information will be provided by the WECSs developer to the Town Board in a written annual report for a least three years after the start of operation. Any monitoring reports delivered to other agencies shall also be provided to the Town Board.

**Section 4-4 REQUIRED SAFETY MEASURES.**

- 4-4.1 Each WECS shall be equipped with both manual and automatic controls to limit the rotational speed of the rotor blade so it does not exceed the design limits of the rotor.
- 4-4.2 If the property owner submits a written request that fencing be required, a six-foot-high fence with a locking portal shall be required to enclose each tower or group of towers. The color and type of fencing for each WECS installation shall be determined based on individual applications as safety needs dictate.
- 4-4.3 Appropriate warning signs shall be posted, visible in all directions upon approaching the tower, warning of electrical shock or high voltage. A sign shall be posted on the entry area of fence around each tower or group of towers and any building (or on the tower or building if there is no fence), containing emergency local contact information. The Town Board may require additional signs based on safety needs.
- 4-4.4 No climbing pegs or tower ladders shall be located closer than 15 feet to the ground level at the base of the structure for freestanding single pole or guyed towers.
- 4-4.5 The minimum distance between the ground and any part of the rotor or blade system shall be 30 feet.
- 4-4.6 WECSs shall be designed to prevent unauthorized external access to electrical and mechanical components and shall have access doors that are kept securely locked at all times.
- 4-4.7 A local telephone number or toll-free 800 number shall be provided in the local public phonebook.
- 4-4.8 Accurate maps of the underground facilities shall be filed with the Town and with "Dig Safely New York (1-800-962-7962)" or its successor.

**Section 4-5 TRAFFIC ROUTES.**

- 4-5.1 Construction of WECSs poses potential risks because of the large-size construction and delivery vehicles and their impact on traffic safety and their physical impact on local roads. Construction and delivery vehicles for WECSs and/or associated facilities shall use traffic routes established as part of the application review process. Factors in establishing such corridors shall include (1) minimizing traffic impacts from construction and delivery vehicles; (2) minimizing WECSs related traffic during times of school bus activity; (3) minimizing wear and tear on local roads; and (4) minimizing impacts on local business operations. Wind Energy Permit conditions may limit WECS-related traffic to specified routes, and include a plan for disseminating traffic route information to the public. The Town Board reserves the right to post roads to specified limits at certain times during the year.
- 4-5.2 The applicant shall retain insurance in accordance with this local law, and is responsible for remediation of damaged roads during and upon completion of the installation or maintenance of a WECS.
- 4-5.3 If the applicant uses any seasonal use highway in the off-season, it shall be solely responsible for the maintenance of said highway including, but not limited to snow plowing. No act of maintenance on a seasonal use highway by an applicant shall be considered as Town maintenance of that highway for purposes of determining the seasonal use status of the highway.

**Section 4-6 SETBACKS FOR WIND ENERGY CONVERSION SYSTEMS.**

- 4-6.1 Audible Noise Standard: The A-Weighted equivalent sound pressure level generated by a WECS operating at full power shall not exceed  $L_{eq}$  of 50 dBA measured at the closest Non-participating property line existing at the time of the application, and shall not exceed  $L_{eq}$  of 45 dBA measured at the closest Non-participating Residence existing at the time of the time of the application. If the ambient sound pressure level exceeds 50 dBA, the standard shall be ambient dBA plus 5 dBA. Independent certification shall be provided before and after construction demonstrating compliance with this requirement. All modeling of noise associated with a Wind Farm shall be in conformance with ISO 9613: Part 2 – “Attenuation of Sound During Propagation Outdoors” using a ground absorption coefficient ( $G$ ) = 0.5, a relative humidity of 50%, and a 1.2 mAGL receptor height. A digital terrain map will be utilized with the model to determine any sheltering from noise due to topography.
- 4-6.2 4-6.2 Interference with television, microwave, and radio reception: The WECS shall be operated such that no disruptive interference is caused. If it is demonstrated that a system is causing harmful interference, the system operator shall promptly mitigate the harmful interference or cease operation of the system.
- 4-6.3 In the event audible noise due to Wind Energy Facility operations contains a steady pure tone, such as a whine, screech, or hum, the standards for audible noise set forth in Section 4-6.1, shall be reduced by five dBA. A pure tone is defined to exist if the 1/3 octave band sound pressure level in the band, including the tone, exceeds the arithmetic mean of the sound pressure levels of the two contiguous 1/3 octave bands by five dBA for center frequencies of 500 Hz and above, by eight dBA for center frequencies between 160 Hz and 400 Hz, or by 15 dBA for center frequencies less than or equal to 125 Hz.
- 4-6.3 In the event the ambient noise level (exclusive of the development in question) exceeds the Section 4-6.1, the applicable standard shall be adjusted to equal the ambient (i.e., background) noise level. The ambient noise level shall be expressed in terms of the highest whole number sound pressure level in dBA, which is exceeded for more than five minutes per hour. Ambient noise levels shall be measured at the exterior of potentially affected existing residences. Ambient noise level measurement techniques shall employ all practical means of reducing the effect or wind generated noise at the microphone. Ambient noise level

measurements may be performed when wind velocities at the proposed project site are sufficient to allow wind turbine operation, provided that the wind velocity does not exceed 30 mph at the ambient noise measurement location.

4-6.4 Any noise level falling between two whole decibels shall be the lower of the two.

4-6.5 Each WECS shall be setback from Site boundaries, measured from the center of the WECS:

- A. Wind Energy conversion facilities shall be located in a manner consistent with all applicable State and Federal Wetlands Laws and Regulations.
- B. The WECS tower shall be set back a minimum of 2.5 times the Total Height of the WECS from:
  - i. The right of way of public roads.
  - ii. Property lines of the site on which the structure is located.
- C. The WECS shall be set back a minimum of 1,500 feet from any non-participating residence in existence at the time the application is filed.
- D. The setback specifications contained in this paragraph may be relaxed or altered by the Town Board, should an applicant demonstrate in their Site Plan that the purpose and policy to be served by the setbacks can be satisfied at a distance different than those contained in this section.

**Section 4-7 NOISE AND SETBACK EASEMENTS.**

4-7.1 In the event a WECS does not meet a setback requirement or exceeds noise or other criteria established in this Local Law, as it existed at the time the Wind Energy Permit is granted, the property shall be considered a Participating Residence with a waiver possibly granted from such requirements by the Town Board in the following circumstances:

- A. Written consent from the affected property owners has been obtained stating that they are aware of the Wind Energy Facility and the noise and/or setback limitations imposed by this Local Law, and that consent is granted to (1) allow noise levels to exceed the maximum limits otherwise allowed or (2) allow setbacks less than required; and
- B. In order to advise subsequent owners of the burdened property, the consent, in the form required by an easement, has been recorded in the County Clerk's Office describing the benefited and burdened properties. Such easements shall be permanent and they may not be revoked without the consent of the Town Board, which consent shall be granted upon either the completion of the decommissioning of the benefited WECS in accordance with this Article, or the acquisition of the burdened parcel by the owner of the benefited parcel or the WECS.

4-7.2 Variances granted under this Section differ from variance requests under Article V of this Local Law, in that no additional Article V variance is required if a variance is given under this Section. An Article V variance must be sought rather than a variance under this Section if the affected property owner will not grant an easement pursuant to this Section; in such case, any residence on said property in question will be a Non-Participating Residence.

**Section 4-8 ISSUANCE OF WIND ENERGY PERMITS.**

4-8.1 A host community agreement with the wind-energy developer must be completed prior to the Town Board's approval of a wind energy permit to cover road impacts and other required mitigation as may be determined by the SEQRA process.

4-8.2 Upon completion of the review process, the Town Board shall, upon consideration of the standards in this Local Law and the record of the SEQRA review, issue a written decision with the reasons for approval, conditions of approval, or disapproval fully stated.

- 4-8.3 If approved, the Town Board will direct the Code Enforcement Officer to issue a Wind Energy Permit. Building Permits will be issued for projects granted a Wind Energy Permit and shall be in compliance with the Uniform Fire Prevention and Building Code and the other pre-construction conditions of this Local Law.
- 4-8.4 The decision of the Town Board shall be filed within five days in the office of the Ashford Town Clerk and a copy mailed to the applicant by First Class Mail.
- 4-8.5 If any approved Wind Energy Facility is not substantially commenced within two years of issuance of the Wind Energy Permit, the Wind Energy Permit shall expire, unless renewed by the Town Board after payment of a renewal fee equal to the original application fee.

**Section 4-9 ABATEMENT.**

- 4-9.1 If any WECS remains non-functional or inoperative and abandoned for a continuous period of one year, the applicant agrees that, without any further action by the Town Board, the applicant shall remove said system at its own expense. Removal of the system shall include removal of all structures and debris to a depth of three feet, restoration of the soil, and restoration of vegetation (consistent and compatible with surrounding vegetation), less any fencing or residual minor improvements requested by the landowner. Also included in the removal are the transmission equipment and fencing.
- 4-9.2 This provision shall not apply if the applicant demonstrates to the Town Board that it has been making good faith efforts to restore the WECS to an operable condition, but nothing in this provision shall limit the Town Board's ability to order a remedial action plan after a public hearing.
- 4-9.3 Non-function or lack of operation may be proven by reports to the Public Service Commission, the New York State Energy Research and Development Authority (NYSERDA), New York Independent System Operator, or by lack of income generation. The applicant shall make available (subject to a non-disclosure agreement) to the Town Board all reports to and from the purchaser of energy from individual WECSs, if requested necessary to prove the WECS is functioning, which reports may be redacted as necessary to protect proprietary information.
- 4-9.4 Decommissioning Bond or Fund. The applicant, or successors, shall continuously maintain a fund or bond of \$25,000 per tower payable to the town, in a form approved by the Town Board for the removal of non-functional towers and appurtenant facilities. All costs of the financial security shall be borne by the applicant. All decommissioning bond requirements shall be fully funded before a Building Permit is issued.

**Section 4-10 LIMITATIONS ON APPROVALS; EASEMENTS ON TOWN PROPERTY.**

- 4-10.1 Nothing in the Local Law shall be deemed to give any applicant the right to cut down surrounding trees and vegetation on any property to reduce turbulence and increase wind flow to the Wind Energy Facility. Nothing in the Local Law shall be deemed a guarantee against any future construction or town approvals of future construction that may in any way impact the wind flow to any Wind Energy Facility. It shall be the sole responsibility of the Facility operator or owner to acquire any necessary wind flow or turbulence easements, or rights to remove vegetation.
- 4-10.2 Pursuant to the powers granted to the Town Board to manage its own property, the Town may enter into noise, setback or wind flow easements on such terms as the Town Board deems appropriate, with respect to Town owned or controlled property, as long as said agreements are not otherwise prohibited by the state or local law.

**Section 4-11 PERMIT REVOCATION.**

- 4-11.1 Testing fund. A Wind Energy Permit shall contain a requirement that the applicant fund and perform periodic noise testing by a certified independent third-party acoustical measurement consultant, which may be required as often as annually, or more frequently upon request of the Town Board in response to complaints by neighbors. The scope of the noise testing shall be to demonstrate compliance with the terms and conditions of the Wind Energy Permit and this Local Law and shall also include an evaluation of any noise complaints received by the town. The applicant shall have 90 days after written notice from the Town Board, to resolve any deficiency. An extension of the 90 day period may be considered by the Town Board, but the total period may not exceed 180 days.
- 4-11.2 Operation. A WECS shall be maintained in operational condition at all times, subject to reasonable maintenance and repair outages. Operational condition includes meeting all noise requirements and other permit conditions. Should a WECS become inoperable, or should any part of the WECS be damaged, or should a WECS violate a permit condition, the owner or operator shall remedy the situation within 90 days after written notice from the Town Board. The applicant shall have 90 days after written notice from the Town Board, to remedy any deficiency. An extension of the 90 day period may be considered by the Town Board, but the total period may not exceed 180 days.
- 4-11.3 Notwithstanding any other abatement provision under this Local Law, and consistent with § 4-9 and § 4-11.3, if the WECS is not repaired or made operational or brought into permit compliance after said notice, the Town Board may, after a public meeting at which the operator or owner shall be given opportunity to be heard and present evidence, including a plan to come into compliance, (1) order either remedial action within a particular timeframe, or (2) order revocation of the Wind Energy Permit for the WECS and require the removal of the WECS within 90 days. If the WECS is not removed, the Town Board shall have the right to use the security account posted as part of the Decommission Plan to remove the WECS.
- 4-11.4 Nothing in this Section shall be read as limiting the power of the Town under Section 6-2 of this Local Law.

**Article 5  
Variance**

**Section 5-1 VARIANCES.**

- 5-1.1 The Town Board may, after a public hearing (which may be combined with other public hearings on Wind Energy Facilities, so long as the variance request is detailed in the public notice), grant a variance from the strict application of the provisions of this Local Law if, in the opinion of the Town Board, the grant of said variance is in the best interests of the town. The Town Board may consider as reasonable factors in evaluating the request, which may include, but are not limited to, the impact of the variance on the neighborhood, including the potential detriment to nearby properties, the benefit to the applicant, feasible alternatives, and the scope of the request.
- 5-1.2 The Town Board may attach such conditions as it deems appropriate to the variance approval as it deems necessary to minimize the impact of the variance.

**Article 6  
Miscellaneous**

**Section 6-1 FEES.**

- 6-1.1 Non-refundable Application Fees shall be as follows:
  - A. WECS Wind Energy Permit: \$500 per megawatt of rated maximum capacity.
  - B. Wind Measurement Towers Wind Energy Permit: \$200 per tower.
  - C. Small-scale WECS Wind Energy Permit: \$150 per WECS.
  - D. Wind Measurement Tower Wind Energy Permit renewals: \$50 per Wind Measurement Tower.
  - E. Variance Application Fee: \$100 per tower site.
  - F. Renewal Process Fee. \$150 per tower.

- 6-1.2 Building Permits. Building Permits are required for each Wind Energy Facility. The Town Board believes the review of building and electrical permits for Wind Energy Facilities other than Small-scale WECS requires specific expertise for those facilities. Accordingly, the permit fees for such facilities shall be \$100 per permit request for administrative costs, plus the amount charged to the town by the outside consultant hired by the Town Board to review the plans and inspect the work. In the alternative, the Town Board and the applicant may enter into an agreement for an inspection and/or certification procedure for these unique facilities. In such case, the Town Board and the applicant will agree to a fee arrangement and escrow agreement to pay for the costs of the review of the plans, certifications or conduct inspections as agreed by the parties.
- 6-1.3 Nothing in the Local Law shall be read as limiting the ability of the Town to enter into Host Community agreements with any applicant to compensate the town for expenses or impacts on the community. The Town Board shall require any applicant to enter into an escrow agreement to pay the engineering and legal costs of any application review, including the review required by SEQRA.
- 6-1.4 Fees subject to change at the discretion of the Town Board. Fees may be added to the Town of Ashford Fee Schedule.

**Section 6-2 ENFORCEMENT; PENALTIES AND REMEDIES FOR VIOLATIONS.**

- 6-2.1 The Town Board shall appoint such Town staff or outside consultants as it sees fit to enforce this Local Law.
- 6-2.2 Any person owning, controlling, or managing any building, structure or land who shall undertake a WECS or wind monitoring tower in violation of this Article, or in noncompliance with the terms and conditions of any permit issued pursuant to this Article, or any order of the enforcement officer, and any person who shall assist in so doing, shall be guilty of an offense and subject to a fine of not more than \$350 or imprisonment for a period of not more than fifteen days, or subject to both such fine and imprisonment for a first offense; for a second offense (both within a period of five years) a fine not less than \$350 nor more than \$700 or imprisonment not to exceed six months, or both; and for a third or more offense (all of which occurred within five years) a fine not less than \$700 nor more than \$1,000, or imprisonment not to exceed six months, or both. Every such person shall be deemed guilty of a separate offense for each week such violation shall continue. The town may institute a civil proceeding to collect civil penalties in the amounts set forth herein for each violation and each week said violation continues shall be deemed a separate violation.
- 6-2.3 In case of any violation or threatened violation of any of the provisions of this local law, including the terms and conditions imposed by any permit used pursuant to this local law, in addition to other remedies and penalties provided here, the town may institute any appropriate action or proceeding to prevent such unlawful erection, structural alteration, reconstruction, moving and/or use, and to restrain, correct, or abate such violation, to prevent the illegal act.

**Section 6-3 Severability.**

Should any provision of this Local Law be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of this Local Law as a whole or any part thereof other than the part so decided to be unconstitutional or invalid.

**Section 6-4 Effective Date.**

This Local Law shall be effective upon its filing with the Secretary of State in accordance with the Municipal Home Rule Law.